ELIZABETH MAGDELINE BUXTON & AS TRUSTEE

v.

PACKAGING SPECIALISTS SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING MOTION NO. F 51 OF 1985]
21 FEBRUARY 1986

LAND LAW: *Sale and purchase agreement - Failure to settle balance of purchase price - Breach of warranty or undertaking clause - Intended acquisition by any authority - Both parties terminating agreement - Caveat lodged - Application for removal of - Registrable interest - Claim in personam - Not registrable under Torrens system.*

The applicants entered into a sale and purchase agreement with the respondent, the subject matter of the agreement being Lot 3308 together with a single storey detached house (the said land) for a consideration of RM445,000. The respondent paid the initial deposit and the balance was to be paid three months later from a loan to be obtained by the respondent. The respondent failed to settle the balance of the purchase price on the due date, alleging that the applicants had breached Clause 10 of the agreement which *inter alia*, contains a warranty relating to intended acquisition by any authority. The respondent had discovered that 56% of the said land was intended to be acquired by Dewan Bandaraya.

Denying any knowledge of any such intended acquisition, the applicants purported to terminate the agreement for the respondent's failure to pay the balance of the purchase price. The respondent rejected this termination and lodged a caveat to protect its interest over the land. The applicants now seek to have the caveat removed on the ground that the respondent has no registrable interest on the land. The respondent contends that it has the right to retain the caveat until after the disposal of the civil suit it had instituted against the applicants so that the *status quo* of both parties can be maintained.

Held:

[1] By not claiming specific performance of the agreement, the respondent has clearly shown an intention that it was no longer interested in purchasing the property but only to seek a refund of the deposit and other expenses incurred. Therefore, it cannot be said that it had any interest in the land which was capable of being registered.

[2] From the nature of its civil suit, the respondent has only a claim *in personam* for which a caveat is not the proper remedy as a means of protecting such a claim. Although such a claim originated from the agreement, it is not capable of being registered under the Torrens system of registration.

[Application allowed in terms of prayers 1 to 3.]

Case referred to:
Mahadevan & Anor. v. Patel [1975] 1 MLJ 207

For the applicants - Izabella De Silva; M/s. Chooi & Co.
For the respondent - P.C. Choong; M/s. Choong & Co.

JUDGMENT

Siti Norma Yaakob J:

On 10 May 1984, the applicants entered into a sale and purchase agreement, wherein they agreed to sell their freehold land held under Grant No. 8069, Lot 3308, Mukim of Kuala Lumpur, together with a single storey detached house to the respondent for a consideration of RM445,000. The respondent paid the initial deposit of RM45,450 and the balance of the purchase price was to be settled not later than 3 months from the date of the agreement from a loan to be obtained by the respondent and in the event of its default, the applicants were entitled to treat the agreement as being terminated and to forfeit the deposit paid to account.

The respondent failed to settle the balance of the purchase price on the due date and explains its failure to do so by alleging that the applicants had breached Clause 10 of the agreement and it had on 29 August 1984 informed the applicants that it was repudiating the agreement and demanded the refund of the deposit and other disbursements incurred. Clause 10 of the agreement contains a warranty or undertaking by the applicants that they have not been served with any notice of any intended acquisition of the land by any authority or that they were aware of any such intended acquisition. However, before the completion date, the respondent discovered that 56% of the land was intended to be acquired by Dewan Bandaraya for the purpose of constructing a link road connecting Jalan Sungei Besi to Jalan Cheras.

Denying any knowledge of such intended acquisition, the applicants, by letter dated 12 September 1984, refused to accept the respondent's repudiation of the agreement. In turn, they had by their letter dated 11 October 1984, notified the respondent that they were also terminating the agreement for the respondent's breach in failing to pay the balance of the purchase price on the due date and they forfeited the deposit. The respondent rejected this purported termination and to protect its interest over the land, lodged a caveat on 17 October 1984. Following this, it also filed a civil suit, C. 4021/84 against the applicants seeking a refund of the deposit, reimbursement for all expenses incurred and general damages on the ground of the applicants' breach of Clause 10.

From the pleadings in the civil suit, it is clear that both sides had alleged breaches of the agreement against each other, both had, as a result, terminated the agreement and both had rejected the other's purported termination.

It is against such a background that the applicants now seek to have the caveat removed on the ground that the respondent has no registrable interest on the land. The respondent considers it otherwise and it contends that it has the right to retain the caveat until after the disposal of the civil suit so that the *status quo* of both parties can be maintained.

Thus the only issue before me is whether the respondent has a registrable interest over the land capable of being protected by a caveat. The respondent admits that although it is claiming for an unsecured debt in the civil suit, nonetheless such a claim can be protected by a caveat as the debt arose out of a land transaction pursuant to a sale and purchase agreement and it is the validity of the termination of the agreement that is disputed in the Civil Suit. It goes further to state that as the debt is linked to the agreement, the caveat should be allowed to remain until after the disposal of the civil suit. For this contention the respondent relies on the decision of the Federal Court in *Mahadevan & Anor. v. Patel* [1975] 2 MLJ 207 where the facts show that in reliance of an arrangement, that one Ratnavale, the proprietor of 2 pieces of land, would charge his properties to secure a loan, the respondent lent him RM225,000. Ratnavale however did not charge his lands and to protect his interest,

the respondent lodged a caveat. On Ratnavale's death, his executors and trustees; the appellants applied to have the caveat removed. The application was dismissed and on appeal, the decision was upheld on the ground that as it was the intention of both parties that the loan should be secured, the respondent had a caveatable interest over the land.

The facts before me are quite different. To begin with, it is not a loan transaction but the sale and purchase of property. The caveat was lodged after the respondent discovered that the area of the property it was to purchase would be greatly reduced by the intended acquisition of the land by Dewan Bandaraya and to protect its interest under the agreement, it lodged the caveat and subsequently filed a civil suit against the applicants seeking a refund of the deposit paid to account and other sums alleged to have been incurred. It is not claiming specific performance of the agreement and by so doing, the respondent has clearly shown an intention that it was no longer interested in purchasing the property but only to seek a refund of the deposit and other expenses incurred. To that end, it cannot be said that it had any interest in the land capable of being registered. As the only persons who can lodge a caveat are those entitled to obtain a title or interest in land and since the respondent has demonstrated that it was no longer interested to acquire such interest, it cannot insist that the caveat be allowed to remain. From the nature of its civil suit, the respondent has only a claim *in personam* against the applicants for which a caveat is not the proper remedy as a means of protecting such a claim. Admittedly, such a claim originated from the agreement but it is not capable of being registered under our Torrens System of registration. It is simply a claim for an unsecured debt and for this very reason, I allow this application in terms of prayers 1 to 3 of this Originating Motion. For the same reasons, I make a similar order in Originating Motion F. 52/85.

Also found at [1986] 2 CLJ 241